

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD MICHAEL MERCHANT,

Defendant-Appellant.

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UNPUBLISHED

February 9, 1999

No. 201583

Ingham Circuit Court

LC No. 96-070744 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of larceny from a motor vehicle, MCL 750.356a; MSA 28.588(1). We affirm.

Defendant's only contention on appeal is that he was denied the effective assistance of counsel when his trial counsel (1) failed to address the matter of how the jury was to determine the fair market value of the stolen property, and (2) failed to address the fact that the prosecution presented no evidence of the fair market value of the stolen property. Although the fair market value of the stolen property was irrelevant to the original charge of larceny from a motor vehicle, it is an essential element of the offenses of receiving and concealing stolen property of a value under one hundred dollars and receiving and concealing stolen property of a value over one hundred dollars. See MCL 750.535; MSA 28.803. The jury was instructed on receiving and concealing stolen property pursuant to a request by defendant's trial counsel. Defendant does not argue that defense counsel's decision to request an instruction on the offense of receiving and concealing stolen property itself constituted ineffective assistance of counsel.

To justify reversal on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). In order to demonstrate that counsel's performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Strickland, supra* at 690-

691; *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). To demonstrate prejudice, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Strickland*, *supra* at 694; *Stanaway*, *supra* at 687-688.

By his own argument, defendant essentially admits that he was not entitled to an instruction on receiving and concealing stolen property because "the prosecution introduced no evidence as to the value" of the stolen property. In order to support an instruction on a "lesser included offense," the evidence adduced at trial must be sufficient to support a conviction of the lesser offense. See *People v Hendricks*, 446 Mich 435, 444; 521 NW2d 546 (1994). The instruction was also wrongly given because receiving and concealing stolen property is not in the same class or category of offenses as larceny from a motor vehicle. See *Hendricks*, *supra* at 444; *People v James*, 142 Mich App 225, 229; 369 NW2d 216 (1985). Because defendant was not entitled to an instruction on receiving and concealing stolen property, he could not have been prejudiced by defense counsel's failure to adequately address the offense. Accordingly, he is not entitled to the relief sought on appeal. *Strickland*, *supra* at 687.

Affirmed.

/s/ William B. Murphy  
/s/ Barbara B. MacKenzie  
/s/ Michael J. Talbot